

XI The SUBCONTRACTOR shall become entitled to receive progress payments for its Work duly performed during the payment periods as established in the Contract Documents and this Subcontract Agreement. To the extent permitted by law, it is specifically understood and agreed that payment to SUBCONTRACTOR is dependent on the condition precedent that FEC receives payment from Construction Manager and/or Owner for SUBCONTRACTOR's Work. SUBCONTRACTOR agrees to look solely to such funds for payment.

SUBCONTRACTOR must submit its requisition, in proper form, to FEC at least five (5) days prior to the requisition date set forth in the Contract Documents. The estimate of the principal amount as determined by FEC shall be binding on the SUBCONTRACTOR and progress payments shall not exceed ninety (90%) percent of the amount requisitioned by the SUBCONTRACTOR. Final payment shall become payable sixty (60) days after final completion and acceptance of the Work and receipt of payment by FEC from Construction Manager, including any retainers, which payment shall be a condition precedent to FEC's obligation to pay SUBCONTRACTOR. Prior to any payment SUBCONTRACTOR shall prove that its Work is free and clear from any and all liens and claims and shall furnish all required lien waivers and releases in connection with the final payment and all interim progress payments.

The terms, provisions and conditions of this Subcontract Agreement are not intended to nor shall they be construed as in anyway prohibiting, diminishing or abrogating SUBCONTRACTOR's right to file and enforce a mechanics' lien under the Lien Laws of the State in which the Project is located, and SUBCONTRACTOR shall be entitled to pursue any and all rights to which it may be entitled under such Lien Law in event FEC does not pay SUBCONTRACTOR amounts earned hereunder, including non-payment resulting from delayed payments or non-payment by third parties to FEC.

Acceptance of final payment by the SUBCONTRACTOR constitutes a general release of Owner, Construction Manager, FEC and its Surety, if any.

XII SUBCONTRACTOR shall discharge any Notice of Lien or other encumbrance filed against the SUBCONTRACTOR, FEC, Construction Manager, Owner, the Project or any monies earned by the SUBCONTRACTOR or FEC, should such lien result from failure of SUBCONTRACTOR to pay its obligations.

XIII The validity, interpretation and performance of this Subcontract Agreement shall be governed by the Laws of the State of Delaware and any judicial proceeding shall be brought in the County of New Castle and State of Delaware within two (2) years of the date the cause of action accrued, but in no event after final payment to the SUBCONTRACTOR. SUBCONTRACTOR agrees to participate in and be bound by any proceedings which directly or indirectly relates to this Subcontract Agreement (whether it be litigation, arbitration and/or mediation). No dispute or controversy shall interfere with the progress of construction and SUBCONTRACTOR shall proceed with the Work without causing interruption, deficiency or delay.

XIV Time of performance is of the essence of this Subcontract Agreement and the SUBCONTRACTOR agrees that it will perform its Work in accordance with the Construction Schedule prepared from time to time by FEC or the Construction Manager and that it will not delay any of the work being performed by other contractors or subcontractors or the progress of the project including that of the Construction Manager or FEC. SUBCONTRACTOR agrees that it will be responsible for all damage(s) caused by its delay(s) during the course of the performance of its Work.

Should the SUBCONTRACTOR's Work be delayed, hindered, obstructed, interfered with, and/or accelerated by a cause or causes beyond the control of the SUBCONTRACTOR, the sole remedy available to the SUBCONTRACTOR shall be an equitable extension of time for the performance of its Work provided FEC is correspondingly entitled to such equitable extension of time from Owner or Construction Manager and under no circumstances shall SUBCONTRACTOR be entitled to any increase in the Contract Price or to damages as a consequence or result of such delay, hindrance, obstruction, interference, and/or acceleration, and SUBCONTRACTOR's sole remedy shall be any equitable extension of time for the performance of its Work.

XV This Subcontract Agreement cannot be changed, modified or altered orally. It supersedes all prior representations made by FEC and is conditional upon the approval of the SUBCONTRACTOR by the Construction Manager and/or Owner. If any term or provision of this Agreement is found invalid, illegal or unenforceable, such term or provision shall be deemed severed from this Subcontract Agreement and it shall not affect the validity and enforcement of all remaining terms and conditions of this Subcontract Agreement.

XVI The SUBCONTRACTOR shall be responsible and liable for all costs, disbursements and expenses, including attorney's fees, incurred by FEC as a result of FEC having to defend or take part in any action or proceeding which directly or indirectly relates to acts or omissions of the SUBCONTRACTOR, its employees, directors, officers, agents, or its subcontractors, suppliers or vendors.

XVII SUBCONTRACTOR shall maintain and preserve for a period of five (5) years after final payment under this Subcontract Agreement all records and accounts pertaining to Work performed for FEC. FEC shall have the right to audit, copy and inspect said records and accounts at all reasonable times during the course of such Work, and for five (5) years following completion of the Work, for the purpose of verifying units furnished and costs incurred, as applicable.

XVIII SUBCONTRACTOR to submit a single guarantee stating that all portions of the Work are in accordance with contractual requirements. SUBCONTRACTOR guarantees all Work against faulty and improper material and workmanship for a period of one (1) year from date of final acceptance by the Owner, except that where guarantees or warranties for longer terms are specified herein or in the Contract Documents, such longer term shall apply. At no additional cost to Owner, Construction Manager or FEC, within twenty-four (24) hours after notification, SUBCONTRACTOR shall correct any deficiencies which occur during the guarantee period, all to the satisfaction of the Owner and/or Construction Manager.

XIX SUBCONTRACTOR represents and warrants that any equipment, product, system, software, hardware or application of same ("Product") provided and/or installed is Year 2000 compliant (will function properly and without interruption before, during and after January 1, 2000) and that all data and files, enhancements, upgrades, customizations and modifications, shall accurately process date and time data. will be Year 2000 compliant. If it appears that any hardware or software or any other product, does not conform to this warranty, SUBCONTRACTOR shall within twenty-four (24) hours of receipt of notice, repair, replace or correct such non-conformity at SUBCONTRACTOR's sole expense and cost including but not limited to parts, labor, shipping, packaging, transportation and insurance.

SUBCONTRACTOR's liability hereunder shall extend to all damages proximately caused by the breach of any of the foregoing warranties and guarantees. SUBCONTRACTOR shall indemnify, defend and hold harmless FEC, from and against all claims, losses, damages, expenses and/or costs arising from SUBCONTRACTOR's breach of the aforesaid warranties and guarantees. This indemnification shall not be subject to any limitation of remedies which are contained in any agreement(s) or purchase order(s) between SUBCONTRACTOR and FEC, and shall survive the termination of any agreement(s) or purchase order(s) between said parties.

The failure of either SUBCONTRACTOR, or its' lower-tier subcontractors, suppliers or vendors, to use equipment, systems, software and hardware that in any way supports its ability to supply and/or install Products or otherwise perform its obligations under this Agreement shall not be considered as a Force Majeure event and shall not in any way relieve SUBCONTRACTOR from its duty to timely perform its obligations under this Agreement.

XX FEC by written notice, shall have the right to cancel and terminate this Subcontract Agreement and the employment of SUBCONTRACTOR for its own convenience. In such event, FEC shall pay the SUBCONTRACTOR for the Work actually performed in an amount proportionate to the Contract Price, provided the SUBCONTRACTOR is not in default.

XXI In the event Owner or Construction Manager becomes insolvent, files a petition for the benefit of creditors or enters into proceedings relating to bankruptcy, whether voluntary or involuntary, any and all payment obligations and liability to SUBCONTRACTOR from FEC shall end, and SUBCONTRACTOR's only remedies will be a) filing a claim within the bankruptcy or other proceedings, or b) accepting a proportionate amount of FEC's claim or percentage thereof relating to SUBCONTRACTOR's Work under the bankruptcy or other proceedings or settlement, if any, or c) an apportioned percentage if FEC's claim is purchased by a third party.

XXII SUBCONTRACTOR shall comply with all requirements relative to Equal Employment Opportunity and Affirmative Action Requirements. Further, SUBCONTRACTOR shall include said requirements in any subcontract or purchase order it has with any other party in such a manner so that said requirements will be binding upon those parties.

XXIII No provision contained in this Subcontract Agreement shall create or give to third parties any claim or right of action against FEC, Construction Manager and/or Owner beyond such as may legally exist in the absence of any such provision.

XXIV SUBCONTRACTOR agrees to maintain the confidentiality of all information and documentation as proprietary, confidential or otherwise restricted as to disclose such as, but not limited to, programs, codes, flow charts, logic diagrams, files and associated documentation, which are either the proprietary property of FEC or the property of others that are licensed, disclosed or entrusted to FEC. The obligations contained in this clause shall survive the expiration or termination of this Subcontract Agreement.

XXV It is the intent and understanding of the parties to this Subcontract Agreement that each and every provision of law required to be inserted in this Subcontract Agreement shall be and is inserted herein. Furthermore, it is hereby stipulated that every such provision is to be deemed to be inserted herein, and if, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then this Subcontract Agreement shall forthwith upon the application of either party be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party hereunder

XXVI In event of any conflict or ambiguity within the Contract Documents, this Subcontract Agreement shall take precedence and control.

XXVII This Subcontract Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Subcontract Agreement to be drafted.

XXVIII SUBCONTRACTOR must be properly licensed to perform the Work in the City, County and State in which the proposed Work is to be performed. SUBCONTRACTOR shall furnish and pay for all permits and licenses necessary to complete the Work and legal evidence of such shall be delivered to FEC.

XXIX The parties agree that for the performance of its contractual obligations, SUBCONTRACTOR shall be an independent contractor and shall not be considered an agent or servant of FEC.

XXX The individual executing this Subcontract Agreement on behalf of SUBCONTRACTOR personally certifies and warrants that by his or her execution hereof, this Subcontract Agreement shall be legally binding on and enforceable against SUBCONTRACTOR.

IN WITNESS WHEREOF the parties have executed this Subcontract Agreement on the day and year first above written.

Forest Electric Corp.

By: _____
Name:
Title:

By:
Name:
Title:

EXHIBIT "A"

SCOPE OF WORK

[DETAIL SCOPE OF WORK / LIST DRAWINGS]

All other terms and conditions as described in Forest Electric Corp 's Contract with the Construction Manager are applicable.

SUBCONTRACTOR agrees that the Work specifically set forth in this Scope of Work document includes all other work incident or related thereto, reasonably necessary to its performance and usually performed by the trades.

The Work shall be performed in a skillful and workmanlike manner with new material, products and equipment of the usual quality for a job of this type.

SUBCONTRACTOR shall provide at its expense all supervision, tools, equipment, hoisting charges, elevator charges, heat, light, power, etc. to perform its own Work.

A-1

SUBCONTRACTOR'S INITIALS_____

CL 0629

B-0101

EXHIBIT "B"

INSURANCE REQUIREMENTS

Prior to inception of operations, SUBCONTRACTOR shall enroll into and comply with all aspects of the Owner Controlled Insurance Project (see attached OCIP Manual). SUBCONTRACTOR must provide evidence of off-site coverages, however in the event the SUBCONTRACTOR is not approved and enrolled into the OCIP SUBCONTRACTOR must maintain the following insurance as a minimum, in addition to coverages outlined in the OCIP Manual.

COVERAGELIMITS OF LIABILITY

Commercial General Liability

\$10,000,000 per Occurrence/General Aggregate Combined Single Limit Bodily Injury and Property Damage. Limits may be provided through a combination of primary and umbrella/excess policies.

Coverage(s) shall provide and encompass at least the following:

- a. X, C and U hazards, where applicable.
- b. Independent Contractors.
- c. Blanket Contractual Liability covering all Indemnity Agreements.
- d. CGL coverage written on an occurrence form.
- e. Completed Operations/Products Liability with a two (2) year extension beyond completion and acceptance of the project.
- f. Broad Form Property Damage
- g. Person Injury Liability (A,B, & C)

Auto Liability

\$1,000,000 per Occurrence Combined Single Limit Bodily Injury and Property Damage. Limits may be provided through a combination of primary and umbrella/excess policies.

Workers Compensation/Employers Liability

As determined by Statute with other states endorsement and minimum Employers Liability Limits of \$500,000 bodily injury each Accident; \$500,000 bodily injury by disease – policy limit; \$500,000 bodily injury by disease – each employee.

"All Risk" Property Insurance

Covering all material, equipment and supplies stored away from the Project site and while in due course of transit until actually delivered to the Project site and accepted, including installation. Subcontractor/vendor shall be responsible for all deductibles. Coverage shall not be less than \$2,000,000 per Occurrence

Pollution Liability Insurance

Limits of liability of \$2,000,000 each claim and aggregate with a deductible no greater than \$100,000 each claim.

ENDORSE AS ADDITIONAL INSURED:

Forest Electric Corp., EMCOR Group, Inc., Bank One Building Corporation, its parent and affiliates, directors, officers, representatives, agents and employees, Tishman Construction Corporation of Maryland, Tishman Construction Corporation, Gensler, EYP Mission Critical Facilities, Inc., and each of their respective parent companies, corporations and/or partnerships and their owned, controlled, affiliated, associated and subsidiary companies, corporations and/or partnerships and their respective agents, consultants, principals, partners, servants, officers, directors, and employees of each and any other indemnitees as required by the contract documents.

The Certificate Holder shall be:

Forest Electric Corp.
Two Penn Plaza
New York, NY 10121

- The following Certificate Addendum is required to be executed and returned.
- Policies to be primary and non-contributory as respects the coverage afforded the additional insureds. If subcontractor or vendor has other insurance that is applicable to the loss, it shall be on an excess basis. SUBCONTRACTOR's liability under any policy provided hereunder shall not be reduced by the existence of such other insurance
- Certificate(s) of Insurance must provide for thirty (30) days written notice prior to cancellation, non-renewal or material modification of any policy to the Certificate Holder and ten (10) days written notice for non payment of premiums. Such Certificate(s) of Insurance shall have the phrase "endeavor to" deleted. Additionally, language attempting to waive the broker liability for failure to provide notice will not be permitted.
- The insurance policies must include a waiver of subrogation clause as follows: "It is agreed that in no event will the insurance company have any right of recovery against any of the Additional Insureds".
- All insurance carriers must be licensed in the State where the Project is located and be rated at least A-VIII in Best's.
- SUBCONTRACTOR shall provide a copy of the Employer's First Report of Injury or its equivalent to Forest Electric Corp., attention Insurance Department, within ten (10) days of any injury or illness to any employee of the SUBCONTRACTOR arising out of, or alleged to have arisen out of or during the course of Work performed at the Project.

The SUBCONTRACTOR shall not sublet or subcontract any part of this Subcontract Agreement without assuming absolute responsibility for requiring similar insurance from its subcontractors, suppliers and vendors

Failure of the SUBCONTRACTOR to maintain full and complete insurance may be deemed a material breach allowing Forest Electric Corp. to terminate this Subcontract Agreement, or to provide insurance at the SUBCONTRACTOR's sole expense; in neither case, however, shall the SUBCONTRACTOR's liability be lessened.

Crescon Controls, Inc.

OP ID EP

DATE 10/15/03

Additional Insured: Forest Electric Corp., EMCOR Group, Inc., Bank One Building Corporation, its parent and affiliates, directors, officers, representatives, agents and employees, Tishman Construction Corporation of Maryland, Tishman Construction Corporation, Gensler, EYP Mission Critical Facilities, Inc., and each of their respective parent companies, corporations and/or partnerships and their owned, controlled, affiliated, associated and subsidiary companies, corporations and/or partnerships and their respective agents, consultants, principals, partners, servants, officers, directors, and employees of each and any other indemnitees as required by the contract documents.

Addendum: Policies are primary and non-contributory as respects the coverage afforded the additional insureds.

Waiver of Subrogation: It is agreed that in no event will the insurance company have any right of recovery against any of the Additional Insureds.

CL 0633

B-0105



Forest Electric Corp.
Two Penn Plaza, Floor 4
New York, NY 10121
Phone: 212.318.1500
Fax: 212.318.1793
www.forestelectric.net

October 2, 2003

Creedon Controls
3424 Old Capitol Trail
Wilmington, DE 19808
ATTN: Pat Creedon

RE: Bank One Brandywine - CDC II
General Lighting and Power - RFP 6B REVISED 10/31/03

Dear Ms. Creedon,

This letter is to acknowledge our mutual desire to enter into a Subcontract Agreement with Creedon Controls Electrical Contractors on the above referenced Project for a lump sum of **\$3,184,600.00** for electrical services, based on your Response to an Invitation to Bid - Best and Final Price, September 29, 2003, with a proposed delivery date as per submitted schedule.

Although the Prime Contract Documents have not been finalized, it is the intent of the parties to begin Work and will endeavor to enter into and execute a definite Subcontract Agreement defining the construction services which shall include, in addition to other terms and conditions, customary representations, warranties, bonding, indemnities, and insurance from Subcontract Agreement executed, Subcontractor agrees to be bound to the terms and conditions of the Subcontract Agreement as attached hereto as Exhibit 1.

Subcontractor will furnish evidence of insurance as per Exhibit B of the Subcontract Agreement prior to proceeding with any Work.

Very truly yours,

FOREST ELECTRIC CORP.

Paul Angerame
Vice President

This Letter of Intent is accepted and will be considered executed after the required subsequent review, modification, negotiations, and implementation of the advice from Creedon Controls Inc.'s legal council, allowing 14 days for response to address terms, conditions, scope of work and any/all other items requiring additional considerations.

Agreed to and Accepted By:

Name: PATRICIA CREEDON, 11/05/03
Title: PRESIDENT

Datacom Services • Power Solutions • Technology • Facilities Management

000001

B-0106

CONFIDENTIAL

Donna Lucas

10/15/2003 11:06 AM

To: Paul Angerame/Forest/EMCORGROUP@EMCORGROUP

cc:

Subject: Re: Fw: Bank One Contract Forms

Please advise on hte followng.

If we are to have no exposure, we could use Bank One's form of agreement and place us as Agent for Owner. With the sample Subcontracts being use, we have exposure.

— Forwarded by Donna Lucas/Forest/EMCORGROUP on 10/15/2003 11:08 AM —

Donna Lucas

10/01/2003 12:43 PM

To: Paul Angerame/Forest/EMCORGROUP@EMCORGROUP

cc:

Subject: Re: Fw: Bank One Contract Forms

Paul, please clarify if this is the agreement the Bank wants us to give to our subcontractors. If so, we will have to re-work the contract document. The attached copies will bind our subcontractors to Bank One (Tishman being Agent & Construction Manager for Owner).

Paul Angerame

Paul Angerame

10/01/2003 11:58 AM

To: donnalucas@forestelectric.net

cc:

Subject: Fw: Bank One Contract Forms

Per your request.

Sent from my BlackBerry Wireless Handheld

Terry Peng

From: Terry Peng

Sent: 10/01/2003 11:51 AM

To: Paul Angerame/Forest/EMCORGROUP@EMCORGROUP

Subject: Bank One Contract Forms

Terry Peng

Forest Electric Corp.

2 Penn Plaza

New York, New York 10121

Tel: 212.318.1558

Fax: 212.318.1791

Cell: 347.267.2000

— Forwarded by Terry Peng/Forest/EMCORGROUP on 10/01/2003 11:54 AM —



"Katherine Valdes"

<KValdes@tishman.co
m>

10/01/2003 11:38 AM

To: <TerryPeng@forestelectric.net>

cc:

Subject: Bank One Contract Forms

FE 014334

B-0107

Terry,

As per Paul Welsing's request, attached are the contract forms for both CDC-1 and CDC-2.

If you have any questions, please call Paul or myself.

Katherine Valdes
Tishman Technologies Corporation
666 5th Avenue, 36th Floor
New York, New York 10103
Tel: (212) 739-7214
Fax: (212) 843-3991
E-mail: kvaldes@tishman.com



CONTRACT.CDC-1.doc



CONTRACT.CDC-2.doc

FE 014335

B-0108

SINGLE PROJECT
CONSTRUCTION SERVICES AGREEMENT
CONTRACT NO.

CONFIDENTIAL

Pre-bid meeting will/will not be held. If applicable, the pre-bid meeting will occur at _____ A.M./P.M. on _____ at **CDC #1 site, Bear, Delaware.**

When completed, return two (2) executed copies of this Single Project Construction Services Agreement if by U.S. mail addressed to Owner c/o **Tishman Construction Corporation of Maryland, 666 Fifth Avenue, New York, New York 10103**, Mail Code _____; if hand delivered to Owner c/o _____, Floor, _____, in each case for receipt by Owner by or before _____ A.M./P.M. on _____.

Owner:

Banc One Building Corporation
 1 Bank One Plaza
 Mail Code IL1-0505
 Chicago, IL 60670-0503

Construction Contractor:

Owner's Project Manager:

Karl Wm. Auwarter, VP, Real Estate

Construction Contractor's Key Staff Members:

Superintendent: _____
 Assistant Superintendent: _____

Building Owner/Manager: None

Site:

Bank One Core Data Center #1
501 Bear Christiana Road
Bear, Delaware 19701

Other Key Staff:

Title	Name:
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Construction Manager:

Tishman Construction Corporation of Maryland
 666 Fifth Avenue
 New York, New York 10103-0256

Construction Contractor's Authorized Signatories:

1. _____
 2. _____
 3. _____
 4. _____

This Single Project Construction Services Agreement is made as of the _____ day of _____, ("Agreement") between Owner and Construction Contractor. This Agreement, including all exhibits attached hereto, together with all drawings, specifications and modifications issued after the execution of this Agreement and delivered to Construction Contractor, are herein called the "Contract" and the "Contract Documents". Owner and Construction Contractor agree to the terms and conditions set forth in the Contract Documents.

1. The project ("Project") consists generally of, and a general description of the Work is (and, if applicable, a more detailed description of the Work is set forth on Exhibit C), as follows: _____

2. Construction Contractor acknowledges it received the plans and specifications that are listed on, and, as applicable, a more detailed description of the Work as set forth on, Exhibit C hereto.

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3. Construction Contractor's obligations under this Agreement will/will not (strike through one) require payment and performance bonds as set forth in Section 6.04 of the General Conditions attached hereto as Exhibit G ("General Conditions"). If no selection is clearly made in the preceding sentence, then payment and performance bonds will be required as set forth in Section 6.04 of the General Conditions.
4. Liquidated damages will/will not (strike through one) be applicable to the Project as set forth in Section 7.03 of the General Conditions. If required, the "Per Day Liquidated Damage Amount" is \$ N/A.
5. The "Contract Sum" is \$ _____. The Contract Sum (subject to additions and deductions by change orders as provided by the Contract Documents) includes all costs and expenses related to the Work incurred by or on behalf of Construction Contractor and any costs or expenses in excess of the Contract Sum in anyway related to the Work or the Contract Documents shall be paid by Construction Contractor. Additionally, upon final completion of the Work at the time of the final payment being made to Construction Contractor, all costs associated with unused allowances and contingencies will be adjusted and returned to the Owner.
6. Written notice shall be deemed to be duly served if served to the Owner or Construction Contractor, as the case may be, at the respective address set forth below in accordance with Section 6.03 of the General Conditions:

If to Owner, addressed to:

Bank One301 N. Walnut StreetWilmington, DE 19801Attention: Karl Auwarter

If to Construction Contractor, addressed to:

Attention: _____

With a copy to:

Tishman Construction Corporation of
 Maryland
 666 Fifth Avenue
 New York, New York 10103-0256
 Attention: William Stanton

7. Construction Manager hereby represents to Construction Contractor that (i) Owner has retained Construction Manager to act as Owner's construction manager to arrange for the construction of the Project; and (ii) Construction Manager has full power and authority and is duly authorized to execute and deliver this Contract with and to Construction Manager upon the terms and conditions set forth herein. All communications from Owner to Construction Contractor shall be delivered either (i) to Construction Manager with instructions to forward such communications to Construction Contractor, or (ii) directly to Construction Contractor with a simultaneous notification to Construction Manager. All written approvals and actions required of or permitted to be taken by Owner under the Contract shall be effective if executed by either Owner or by Construction Manager acting on Owner's behalf, and Construction Contractor shall be permitted to rely on all such written approvals unless and until Owner (and not Construction Manager) notifies Construction Contractor in writing to the contrary. Construction Contractor shall be entitled to rely on information communicated through the Construction Manager and work with the Construction Manager until Owner provides written notice of the termination of such Construction Manager's responsibilities or a substitution of such Construction Manager.

This Agreement shall be effective only when (i) Owner executes and delivers this Single Project Construction Services Agreement to Construction Contractor, (ii) all appropriate blanks contained herein are completed, and (iii) each of the Exhibits A, B, C, D, E, F, and G (each of which is hereby incorporated herein) has been completed and attached hereto.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

CONSTRUCTION CONTRACTOR:

FIRM: _____

By: _____

Name: _____

Title: _____

OWNER:

BANC ONE BUILDING CORPORATION,
an Illinois Corporation

By: Tishman Construction Corporation of Maryland,
as Banc One Building Corporation's agent and
construction manager

By: _____

Name: William Stanton

Title: Senior Vice President

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LIST OF EXHIBITS
TO
SINGLE PROJECT CONSTRUCTION SERVICES AGREEMENT

- | | |
|-----------|--|
| EXHIBIT A | COMPLETION SCHEDULE |
| EXHIBIT B | SCHEDULE OF VALUES AND ANTICIPATED DRAW SCHEDULE |
| EXHIBIT C | PLANS AND SPECIFICATIONS |
| EXHIBIT D | WORK AREA |
| EXHIBIT E | MAXIMUM CHANGE ORDER RATES FOR OVERHEAD, PROFIT, CONTRACTOR'S FEE,
AND GENERAL CONDITIONS |
| EXHIBIT F | RATES AND UNIT PRICES |
| EXHIBIT G | GENERAL CONDITIONS TO SINGLE PROJECT CONSTRUCTION SERVICES
AGREEMENT |

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EXHIBIT A

COMPLETION SCHEDULE

Note: This Schedule must include the dates for Substantial Completion and Final Completion.

Section "E" in attached Rider "A", dated

FE 014340

B-1

Single Project Construction Services Agreement – Fixed Price 8/11/2003

Doc #:CHI01 (229248-00157) 50118240v6;08/12/2003/Time:10:42

B-0113

EXHIBIT B

SCHEDULE OF VALUES AND ANTICIPATED DRAW SCHEDULE

Note: These schedules must specifically separate out the Cost of the Work.

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B-2

FE 014341

Single Project Construction Services Agreement – Fixed Price 8/11/2003

Doc #:CHI01 (229248-00157) 50118240v6;08/12/2003/Time:10:42

B-0114

EXHIBIT C

PLANS AND SPECIFICATIONS

Attached Rider "B", List of Drawings and Specifications, dated

Attached Rider "A", General Addendum, dated

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FE 014342

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EXHIBIT D

WORK AREA

501 Bear Christiana Road
Bear, Delaware 19701

Site Logistics Plan dated April 17, 2003 attached

D-1

FE 014343

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EXHIBIT E

MAXIMUM CHANGE ORDER RATES FOR OVERHEAD,
PROFIT, CONTRACTOR'S FEE, AND GENERAL CONDITIONS

- | | | |
|----|--|---|
| 1. | Subcontractor may add to its "on-site" cost for extra Work. | <u>15 %</u> for all overhead, profit, fee and general conditions items |
| 2. | Construction Contractor may add to its "on-site" cost of extra Work when such Work is performed directly at the site with its own personnel, equipment and materials, it being agreed by Construction Contractor that it will not subcontract out work when it would be more efficient (both in terms of time and money) for Construction Contractor's own personnel to perform such work. | <u>0 %</u> for all of Contractor's Fee and general conditions items related to such Change Order |
| 3. | Construction Contractor may add an additional percentage to subcontractor's costs for administration and supervision of extra Work by a subcontractor. | <u>6 %</u> for all of Contractor's Fee and general conditions items related to such Change Order |
| 4. | Construction Contractor shall deduct over and above his "on-site" cost of deleted Work when such Work would have been performed directly at the Site with its own personnel, equipment and materials. | <u>15 %</u> for all of Contractor's Fee and general conditions items related to such Change Order |
| 5. | Construction Contractor shall deduct an additional percentage over and above subcontractor's credit for administration and supervision of extra Work by a subcontractor. | <u>6 %</u> for all of Contractor's Fee and general conditions items related to such Change Order |

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EXHIBIT F

RATES AND UNIT PRICES

Item

Price

Attached Rider "C" – Alternates and Unit Prices, dated

F-1

FE 014345

B-0118

CONFIDENTIAL

EXHIBIT G
GENERAL CONDITIONS
TO
SINGLE PROJECT CONSTRUCTION SERVICES AGREEMENT

These General Conditions are attached to and made a part of the Single Project Construction Services Agreement ("Agreement"). All terms defined either in the Agreement or in these General Conditions shall have the meaning ascribed thereto wherever used in the Contract Documents. Terms and abbreviations not specifically defined in the Contract Documents which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

ARTICLE 1 WORK

1.01 Construction Contractor shall perform or cause to be performed, in a first class manner and in accordance with the Contract, all work set forth in, contemplated by or reasonably inferable as being necessary to produce the intended results from, the plans and specifications listed on Exhibit C to the Agreement (as supplemented and modified by Owner throughout the design process), including all labor and materials to complete the general description of such work contained in the Agreement and all movable furnishings specifically identified as being the responsibility of or to be performed by Construction Contractor on such plans and specifications (as supplemented and modified by Owner throughout the design process) and excluding movable furnishings specified or indicated on such plans and specifications to be excluded or to be the responsibility of Owner or Owner's other contractors or consultants (collectively all such labor, materials, and services to be provided by Construction Contractor are herein called the "Work"). In the event of any discrepancy between large-scale plans and small-scale plans, the large-scale plans shall govern. The foregoing shall not relieve Construction Contractor of Construction Contractor's responsibility to advise Owner of any inconsistencies in any of the plans and specifications which a fully competent first class contractor could reasonably be expected to discover upon review of the plans and specifications. Except as set forth above, if any of the Contract Documents imposes a different or greater obligation or limitation upon Construction Contractor than another Contract Document, the Contract Document imposing the greater obligation or limitation on Construction Contractor shall govern and prevail. Plans and specifications which are either (i) necessary for the proper execution and completion of the Work or for the proper operation of the completed improvements or (ii) consistent with and reasonably inferable from the plans and specifications attached hereto as Exhibit C (as supplemented and modified by Owner throughout the design process) as being part of the scope of the Work may hereafter be furnished and will be incorporated in Exhibit C and into the Work at no additional cost to Owner. Construction Contractor acknowledges that it has participated and will participate in meetings with Owner and its design professionals and Construction Contractor has been given ample opportunity to obtain a thorough understanding of the intended final product and fully reviewed the plans and specification listed on Exhibit C, and thus Construction Contractor hereby agrees that no increase in the Contract Sum shall result unless a change in scope occurs as evidenced by a written change order executed by Owner and Construction Contractor. Construction Contractor shall participate in the value engineering by proposing appropriate and suitable alternatives to achieve the intended design, functionality and quality in a manner that will best enable the Work to be completed within the budget and schedule therefor and shall cooperate and work with the Owner and its consultants as part of an integrated team to maximize the quality of the improvements contemplated by the Work and its components and systems while minimizing the cost of the Work and meeting the requirements of the schedule therefor.

1.02 As between Owner and Construction Contractor, all plans and specifications for the Work and other material related to the Work prepared by Construction Contractor or furnished to Construction Contractor by Owner are and shall remain Owner's property, and shall be used by Construction Contractor only with respect to the Work. Construction Contractor acknowledges that a confidential relationship has been established between Owner and Construction Contractor and that Owner may communicate to Construction Contractor certain confidential information to enable Construction Contractor to render the services required in the Contract. Construction Contractor agrees (i) to treat and to obligate its consultants, employees, and subcontractors to consider and treat all information as secret and confidential, and (ii) not to disclose or issue any information or make available any reports, recommendations and/or conclusions in connection with the Work or the Site, which Construction

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Contractor may make to Owner, or any drawings, to any person, firm or corporation or use the same in any manner whatsoever without first obtaining Owner's prior written approval.

1.03 The Contract Documents represent the entire and integrated agreement between Owner and Construction Contractor and shall be deemed to supersede all prior negotiations, representations or agreements, whether written or oral.

ARTICLE 2 OWNER

2.01 To the extent required by Construction Contractor to perform the Work, Owner shall furnish descriptions of all surveys describing the physical characteristics, legal limitations and utility locations for the area within which the Work is to be performed and where materials are to be stored, which Work areas within the Site are limited to the areas designated as such on Exhibit D to the Agreement ("Work Area"). Construction Contractor shall confine its activities at the Site to the Work Area. All other grades, lines, levels, benchmarks, courses and distances shall be established and maintained by Construction Contractor.

2.02 Unless otherwise provided in the Contract Documents, Construction Contractor will be furnished with, free of charge, one set of prints and one reproducible set of all drawings comprising the plans and specifications and one set of the specifications. Owner shall be responsible for all utility connection charges and tap-in fees, including excess capacity fees, meter installation charges or the like.

2.03 If Construction Contractor is in default of any of its obligations under the Contract Documents, and such failure or default continues for seven days after written notice from Owner, Owner may order Construction Contractor immediately to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Construction Contractor or any other person or entity. This right shall be in addition to, and not in restriction of, Owner's other rights under the Contract Documents.

2.04 The Project Manager identified in the Agreement, or any substitute designated as such in writing from Owner to Construction Contractor, is Owner's representative with full power to bind Owner.

2.05 Owner reserves for itself and its representatives the right of access to any part of the Work at any time for the purpose of observing or testing or to install other work either with its own forces or with other contractors. Such access is not to be construed to mean partial occupancy by Owner.

2.06 Owner reserves the right to designate, by notice to Construction Contractor (if not so designated on Page 1 of the Agreement) one or more persons or entities that is the owner or manager of the Site or the existing building within which the Work is to be performed (if any, the "Building") as a Building Owner/Manager. To the extent a Building Owner/Manager is so designated, all provisions of this Contract relating to the Building Owner/Manager shall apply, and mean and refer, to the persons or entities so designated. To the extent a Building Owner/Manager is not so designated, no force or effect shall be given to those provisions to the extent related to the Building Owner/Manager.

2.07 Owner reserves the right to engage third parties, including architects and engineers, to assist Owner in various capacities related to the Work and Contract Documents, including in the administration of the Contract Documents. Construction Contractor agrees to cooperate with all such consultants, including architects and engineers, in all aspects of the Work and Contract Documents, including the administration thereof. Construction Contractor acknowledges and agrees that Owner may grant conditional approval of or require the approval of any such consultant, including any architect or engineer, as a condition to Owner's granting any consent or approval required of Owner under the Contract Documents. Construction Contractor shall cooperate with such processes required by Owner to obtain such consultant's consents.

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ARTICLE 3 CONSTRUCTION CONTRACTOR

3.01 Intentionally Omitted.

3.02 Construction Contractor shall perform the Work in accordance with all laws, ordinances, codes, rules and regulations, orders and decisions of all government authorities having jurisdiction over the Site ("Government Requirements"), and otherwise perform Construction Contractor's obligations contemplated in the Contract Documents. Construction Contractor acknowledges that Construction Contractor has visited the Site, examined all conditions affecting the Work, and is fully familiar with all of the conditions thereon and affecting the Work and the Work Area. Construction Contractor shall perform no portion of the Work at any time without Contract Documents or, where required, approved (or approved as noted) shop drawings, product data or samples for such portion of the Work.

3.03 Construction Contractor shall employ a competent project superintendent, necessary assistants, and staff, as necessary for the proper administration, coordination and supervision of the Work, all approved by Owner in writing by either being listed in the Agreement or by separate written approval accepted by or on behalf of Owner. Owner's approval of any such person (or of any substitute for such person) shall not relieve Construction Contractor of or otherwise limit or affect Construction Contractor's obligation to employ competent persons of sufficient skill and experience to perform their assigned responsibilities in accordance with the standards and requirements set forth in the Contract. Construction Contractor's project superintendent shall be in attendance at the Work Area for the duration of the Work and such project superintendent's duties shall not be diminished without the prior written consent of Owner. Construction Contractor's project superintendent shall represent Construction Contractor and all communications given to such project superintendent shall be as binding as if given to Construction Contractor. Upon Owner's request, any communication from such project superintendent shall be confirmed in writing by an authorized partner, member or officer, as the case may be, of Construction Contractor. Construction Contractor's project superintendent shall have authority to furnish estimates and to approve field changes and shall attend meetings with Owner at such times and places as shall be requested by Owner to report on the progress of the Work or otherwise to consult with Owner. Construction Contractor's project superintendent and other members of Construction Contractor's staff identified on page 1 of the Agreement or separately approved by Owner as provided above shall not be changed without the consent of Owner unless such person leaves the employ of Construction Contractor, in which event the substitute must first be approved in writing by Owner. If Owner gives Construction Contractor notice Construction Contractor's project superintendent or any other of Construction Contractor's personnel identified on page 1 of the Agreement (or any person that replaces any of the foregoing) has failed to perform his or her responsibilities in accordance with the standards set forth in this Contract and such failure is not remedied within ten (10) days of such notice, Construction Contractor shall, if requested by Owner, promptly replace such person with a person having the competence, skill and experience necessary to perform such responsibilities and approved by Owner. Those individuals who are the authorized signatories for Construction Contractor are also listed in the Agreement.

3.04 Construction Contractor shall (a) supervise and direct the Work using Construction Contractor's best professional skill and attention, and (b) be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work. Construction Contractor shall furnish its best skill and judgment, employing first class professional standards, and shall cooperate with the other parties involved in the Work in furthering the interests of Owner. Construction Contractor accepts sole responsibility for the acts and omissions of Construction Contractor's employees, subcontractors and their respective agents and employees. Construction Contractor shall (i) at all times enforce strict discipline and good order among Construction Contractor's employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him; (ii) confine Construction Contractor's equipment, apparatus, materials, and operations of its workmen and subcontractors within limits allowed by Owner and Building Owner/Manager and not unnecessarily burden the Work Area with materials; (iii) correct, at Construction Contractor's expense, damage to property resulting from the Work; and (iv) if the Work requires a temporary shut-down of a service in the Building or any other improvements on the Site, cause such Work to be accomplished during other than normal hours and coordinated with Owner and Building Owner/Manager at Construction Contractor's expense; provided further that Construction Contractor shall give adequate notice to Owner and Building Owner/Manager that Construction Contractor will require a shut-down.

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3.05 (a) Construction Contractor shall not use, in connection with the Work, any material containing asbestos as defined by the United States Environmental Protection Agency 40 CFR CH. I (7-1-00 Edition) Subpart M-National Emission Standard for Asbestos and the Occupational Safety and Health Administration, Part 1910: Occupational Safety and Health Standards, Subpart Z: Toxic and Hazardous Substances, Standard 1910.1001: Asbestos.

(b) Construction Contractor shall not use, in connection with the Work, any hazardous waste, toxic substance or related materials, including substances defined as "hazardous substances" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9601 et seq., Hazardous Materials Transportation Act, as amended, 49 U.S.C. Sec. 1802, and the Resource Conservation Act and Recovery Act, as amended, 42 U.S.C. Sec. 6901 et seq. ("Hazardous Materials") in such manner as would violate any Government Requirements or would cause any damage or a risk of any damage to the environment, or in such a manner as to leave any residue which could be hazardous to persons or property or cause liability to Owner.

3.06 Construction Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age or national origin or ancestry. Construction Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age or national origin or ancestry. Construction Contractor shall comply with, and shall cooperate with Owner and other contractors and subcontractors in connection with compliance with, the regulations of the Occupational Safety and Health Act of 1970, as amended ("OSHA"), or any similar state law which is applicable. If any Construction Contractor's employee working on the Work files a charge of noncompliance with OSHA, Construction Contractor shall notify Owner's Project Manager promptly upon receiving notice of such charge.

3.07 (a) The Contract Sum is based on the Completion Schedule attached to the Agreement as Exhibit A (said schedule, as modified as permitted herein with Owner's written approval is herein called the "Completion Schedule"). Except as expressly provided for in the Contract Documents, Construction Contractor shall not be entitled to any additional payment for overtime, which includes shift work, required to complete the Work in accordance with the Completion Schedule.

(b) If Owner requests Construction Contractor to work overtime due solely to Owner's election to accelerate the performance of the Work ahead of the Completion Schedule, Construction Contractor shall comply with the following requirements:

(i) Construction Contractor shall submit a statement of employees by name, trade, classification, hourly rate, and premiums or overtime charges worked to substantiate premium or overtime charges, in such detail as to demonstrate to Owner its correctness. These statements shall be prepared on a daily basis and shall be submitted daily for Owner's records. The rates, premiums and overtime charges shall correspond with the schedule of rates and unit costs in Exhibit F to the Agreement, which rates and unit prices include all contributions to federal and state unemployment tax and for federal insurance contributions tax required to be paid by Construction Contractor.

(ii) Owner will pay for authorized overtime work only the amounts of overtime premium wages actually paid by Construction Contractor in accordance with those set forth on the schedule of rates and unit costs attached as Exhibit F to the Agreement.

3.08 (a) Construction Contractor represents and warrants to and covenants with Owner that all materials and equipment furnished under the Contract will be new unless otherwise specified, and that all Work will be free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective by Owner. If required by Owner, Construction Contractor shall promptly furnish satisfactory samples of materials demonstrating that the materials comply with this Section. This representation, warranty and covenant is not limited by the provisions of Section 11.02 hereof related to correction of Work.